



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

New England Police Benevolent Association, Inc.
Local 50

Complainant

v.

State of New Hampshire Department of Safety
Division of Motor Vehicles

Respondent

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Case No: P-0787-1

Decision No. 2007-171

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

New England Police Benevolent Association, Inc., Local 50 ("NEPBA") filed an unfair labor practice complaint on October 4, 2007 claiming that the State of New Hampshire, Department of Safety, Division of Motor Vehicles ("State") committed unfair labor practices in violation of RSA 273-A:5 I (c), (e) and (i).¹ According to NEPBA, in February, 2007 the State decided to evaluate Officer Thomas Keach's ability to perform the essential functions of his job and offered Officer Keach the option of taking sick leave or being put on administrative suspension pending the State's evaluation. Ultimately Officer Keach was cleared to return to work, but the State refused to restore the used sick time, as promised.

As remedies, the NEPBA requests that the PELRB: 1) find the State in violation of RSA 273-A:5 I (c), (e) and (i); 2) order the State to return Officer Keach's sick time; 3) order payment of costs, including attorney fees; and 4) order other such relief as the board deems adequate and necessary.

The State filed its answer and a motion to dismiss on October 19, 2007. The State claims that this matter should be dismissed because NEPBA's allegations are insufficient to establish a violation of the cited provisions of RSA 273-A:5. In its answer, the State denies that it promised Officer Keach that his used sick-leave would be restored as claimed. The State also asserts that Officer Keach was not cooperative throughout the investigation process.

¹ The NEPBA withdrew its RSA 273-A:5, I (h) claim at the pre hearing.

Accordingly, the State requests that the PELRB 1) declare that the State did not violate RSA 273-A:5 I (c), (e) and (i); 2) deny NEPBA's request for payment of costs including attorney fees incurred by the Union; 3) order such other and further relief as it deems just. The State also asks the board to declare that NEPBA breached the parties' collective bargaining agreement by abandoning the grievance procedure and filing a complaint, contrary to RSA 273-A: II (f).²

The undersigned hearing officer conducted a pre hearing conference on December 5, 2007 at the PELRB offices in Concord.

PARTICIPATING REPRESENTATIVES

For the Union: Kevin E. Buck, Esq.

For the Department: Marta A. Modigliani, Esq.

ISSUES PRESENTED FOR BOARD REVIEW

- (1) Whether the complaint should be dismissed for the reasons cited by the State?
- (2) Whether the State breached an agreement to restore Officer Keach's sick time in violation of RSA 273-A:5, I (c), (e), or (i)?

WITNESSES

For the NEPBA:

1. Andrew Ray, NEPBA Representative
2. Officer Thomas Keach
3. Sheri Kelloway, Esq., Counsel, NH DMV
4. Charlie Tarr
5. Major Wayne Perrault

For the State:

1. Virginia C. Beecher, Director, NH DMV
2. Sheri Kelloway, Esq., Counsel, NH DMV
3. Major Wayne Perrault
4. Captain William Magee
5. Lieutenant Nathan Boothby
6. Sergeant Nicole Armaganian

² The State did not submit a filing fee with its complaint, but represented at the pre hearing that the filing fee was paid via an internal transfer among state accounts. This issue is addressed in the decision section of this pre hearing order.

Both parties shall file their final witness list on or before December 11, 2007. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

At the pre hearing conference the parties agreed to the following joint exhibits:

1. Letter to Officer Keach dated 2/21/07
2. Letter to Officer Keach dated 3/28/07
3. Letter to Officer Keach dated 6/4/07
4. Letter to DMV from Officer Keach dated 2/23/07
5. Letter to Officer Keach dated 3/20/07
6. Letter & attachment to Dr. Sawyer dated 2/27/07
7. Letter & attachment to Dr. Sawyer dated 3/20/07
8. Letter from Linda Mead, ARNP 3/2/07
9. Letter from Dr. Sawyer 3/9/07
10. Authorization for Release of Information dated 2/26/07
11. Job Description 2/27/07
12. Collective Bargaining Agreement
13. Relevant portions of Personnel Rules

Both parties reserve the right to amend their List of Exhibits upon proper showing with reasonable notice to the other party. Copies of all exhibits are to be filed electronically or by hard copy (5 copies) no later than December 17, 2007. It is understood that each party may rely on the representations of the other party that listed exhibits will be available at the hearing.

LENGTH OF HEARING

The time set aside for this hearing will be one-half (½) day.

DECISION

1. The parties' representatives shall meet, or otherwise confer, on or before December 17, 2007 and attempt to reach a stipulation on presenting the instant case by written submission, or, in the alternative, without the need for formal testimony. In the event that agreement is reached to submit the case by written submission, the parties shall forthwith file a joint statement indicating such agreement and include a proposed schedule for the parties' filings.

2. If the matter is to proceed to a hearing before the Board, the parties' representatives shall meet, or otherwise confer, on or before December 17, 2007 in order to compose a mutual statement of agreed facts. The parties' representatives shall

memorialize those facts upon which they can so stipulate and file that document on or before 9:00 a.m. on December 18, 2007.

3. The NEPBA shall file an amendment to its complaint on or before December 7, 2007 providing more specificity as to its allegations and how those allegations constitute a violation of RSA 273-A:5, I (c), (e) or (i).

4. The NEPBA shall file its objection to the State's Motion to Dismiss on or before the agreed upon date and time of 4:00 p.m. on December 10, 2007.

5. In the event the State wishes to proceed with its unfair labor practice complaint, it shall file documentation of payment of the \$60.00 filing fee on or before December 14, 2007. In such event the parties shall file a joint motion to consolidate the two cases on or before December 17, 2007.

6. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on:

December 18, 2007 @ 9:30 AM

at the offices of the Public Employee Labor Relations Board in Concord.

So ordered.

Signed this 5th day of December, 2007.



Douglas L. Ingersoll, Esq.
Staff Counsel/Hearing Officer

Distribution:
Kevin Buck, Esq.
Marta A. Modigliani, Esq.